

Service Date: June 12, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Establishment of)	UTILITY DIVISION
Intrastate Discounts for Schools and Libraries)	
Pursuant to Section 254(h) of the)	DOCKET NO. D97.6.97
Telecommunications Act of 1996.)	ORDER NO. 5985

PROPOSED ORDER

NOTICE IS HEREBY GIVEN by the Montana Public Service Commission (Commission) that the action initiated by this order and discussed herein is preliminary in nature and will become final unless a person whose interests will be substantially affected files a petition for a formal proceeding by the close of business on June 20, 1997.

BACKGROUND

1. On May 8, 1997 the Federal Communications Commission (FCC) issued its Report and Order, CC 96-45, Order No. 97-157 (May 8, 1997) (FCC Order), which addresses universal service. The FCC Order sets the stage for implementing key portions of § 254 of the Telecommunications Act of 1996 (the Act). Telecommunications Act of 1996, Publ. L. No. 104-104, 110 Stat. 56 (February 8, 1996). The FCC Order accomplished several things, including identification of services to be supported by federal universal service funding and the mechanisms whereby such funding will be provided. Discounts on telecommunications services and certain non-telecommunications services for schools and libraries are among the items earmarked for federal funding.

2. The FCC Order provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of the federal discount levels for intrastate services. Although the FCC adopted rules that will permit schools and libraries to begin using the discounted services on January 1, 1998, schools and

libraries may begin applying for funding after July 1, 1997. This order addresses the adoption of Montana intrastate discounts for schools and libraries.

FINDINGS OF FACT AND COMMISSION DECISION

3. The federal Act requires that states establish intrastate discounts for designated services provided to eligible schools and libraries. Specifically, the Act states:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

47 U.S.C. § 254(h)(1)(B).

4. Although § 254(h)(1)(B) of the Act permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services, the FCC concluded that the Act does nothing to prohibit federal funding of such intrastate discounts, nor does it prohibit conditioning such funding on state adoption of the federal discount levels.

Report and Order, CC 96-45, Order No. 97-157, ¶ 550. Accordingly, the FCC has decided to exercise its authority to provide federal universal service support for intrastate discounts.

5. The 1997 Montana Legislature passed Senate Bill 89 (SB 89), effective April 22, 1997. Section 16 of SB 89 authorizes the Commission to establish intrastate discounts for schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund. Additionally, subsection 24(5) of SB 89 states that federal universal service for universal access services must be used to reduce state funding for intrastate services. The intrastate discounts provided to schools, libraries, and health care providers according to the FCC Order will be funded completely by the federal universal fund.

6. Discounts range from 20 percent to 90 percent for all telecommunications services, Internet access, and internal connections, subject to a \$2.25 billion annual cap. The range of discounts is correlated to students' eligibility for the national school free and reduced price lunch program, and urban or rural location based on metropolitan statistical areas (MSAs). The following discount matrix has been adopted by the FCC:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
% of Students eligible for national school lunch program	Estimated % of US schools in category	Urban discount %	Rural Discount %
<1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

7. The discounts are to be applied to a pre-discount price. According to the FCC, that price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The pre-discount price is significant because it is the total price that carriers would receive for the services they sell to schools and libraries. Schools and libraries will pay the carrier a discounted rate, and the carriers will receive amounts equal to the discount from universal service support mechanisms. Therefore, the pre-discount price is the price of most significance to providers of services to schools and libraries. The pre-discount price is also highly significant to schools and libraries because they must pay the undiscounted portion of the rate. The FCC believes that this will give schools and libraries a strong incentive to secure the lowest pre-discount price.

8. In its Order, the FCC clarified that the tariffed rate of a carrier would represent a carrier's lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from the tariffed rate. The FCC is not requiring carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries, but rather, discounts will be applied to existing tariff rates where appropriate. The Commission believes that this is appropriate for Montana carriers as well. Accordingly, the Commission will not require that tariffs reflecting the discounts for schools and libraries be filed at this time. The Commission may further consider this issue in a subsequent rulemaking proceeding.

9. The discount levels adopted by this Commission have no impact on universal service assessments paid by Montana carriers. Montana carriers, and through them the ratepayers of this state, will be contributors to the federal universal service fund regardless of the action by the Commission. If the Commission does not adopt discounts, Montana schools and libraries would not be able to avail themselves of this opportunity and the funding would go to states that have adopted the discounts for intrastate services. In order to allow sufficient time for Montana schools and libraries to apply for the funds for the 1997-1998 school year, expedited action is necessary in this proceeding.

CONCLUSIONS OF LAW

10. The 1997 Montana Legislature authorized the Montana Public Service Commission to establish intrastate discounts for schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund. Senate Bill 89, Section 16 (April 22, 1997).

11. The Federal Communications Commission's May 8, 1997 Order on universal service issues provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for discounts is predicated upon the states' adoption of the federal discount levels for intrastate services. Report and Order, CC Docket 96-45, No. 97-157 (May 8, 1997).

ORDER

1. IT IS ORDERED that the discount matrix contained in FCC's Report and Order, CC Docket 96-45, No. 97-157, will be adopted by Montana Public Service Commission unless the Commission receives a written request for hearing from a person whose interests are substantially affected by this proposed agency action no later than the close of business on June 20, 1997.

2. IT IS FURTHER ORDERED that this docket shall remain open to address any issues that may arise pursuant to the implementation of the FCC's universal service order.

DONE AND DATED this 10th day of June, 1997 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.